

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RICK WOLFSON,

Plaintiff,

v.

Civil Action No.

ADORE ME INC.,

Defendant.

COMPLAINT AND DEMAND FOR JURY TRIAL

I. INTRODUCTION

1. This is an action for actual and statutory damages brought by an individual consumer for Defendant's violations of the Telephone Consumer Protection Act of 1991 (hereinafter referred to as the "TCPA").

II. JURISDICTION AND VENUE

2. Subject matter jurisdiction of this Court arises under 28 U.S.C. § 1331.
3. Venue is proper in this district under 28 U.S.C. § 1391(b) in that the Defendant transacts business in the Western District of New York and the conduct complained of occurred in the Western District of New York.

III. PARTIES

4. Plaintiff, Rick Wolfson, is a natural person residing in County of Erie and State of New York.
5. Defendant, Adore Me, Inc. is a foreign business corporation organized under the laws of Delaware doing business in the State of New York.
6. That at all times relevant herein, Defendant owned, operated and/or controlled "customer premises equipment" as defined by the TCPA, 47 U.S.C. § 153(16), that originated, routed, and/or terminated telecommunications.

7. That at all times relevant herein, Plaintiff was and is a “person” as defined by the TCPA, 47 U.S.C. §153(39).
8. That at all times relevant herein, Defendant has used the United States mail service, telephone, telegram and other instrumentalities of interstate and intrastate commerce to attempt to contact consumers.
9. That Defendant, at all times relevant herein, engaged in “interstate communications” as that term is defined by the TCPA, 47 U.S.C. §153(28).
10. That Defendant, at all times relevant herein, engaged in “telecommunications” as defined by the TCPA, 47 U.S.C. §153(50).
11. That Defendant, at all times relevant herein, used, controlled and/or operated “wire communications” as defined by the TCPA, 47 U.S.C. §153(59), that existed as instrumentalities of interstate and intrastate commerce.
12. That Defendant, at all relevant times herein, used, controlled and/or operated “automatic telephone dialing systems” as defined by the TCPA, 47 U.S.C. §227(a)(1) and 47 C.F.R. 64.1200(f)(2).
13. The acts of the Defendant alleged hereinafter were performed by its employees acting within the scope of their actual or apparent authority.
14. All references to “Defendant” herein shall mean the Defendant or an employee of said Defendant.

IV. FACTUAL ALLEGATIONS

15. That on or about early 2017, Defendant has been sending Plaintiff text messages to his cellular telephone.
16. Upon information and belief, the Defendant’s messages were intended to be sent to someone named “Alyssa.”
17. “Alyssa” does not share or otherwise use Plaintiff’s cellular telephone. Plaintiff’s cellular telephone number is not a good contact number for “Alyssa.”
18. Plaintiff never gave consent to Defendant to send automated text messages to his cellular telephone.
19. That Defendant has continued to send automated text messages to Plaintiff’s cellular telephone, resulting in at least 29 text messages.
20. That Defendant’s automated text messages consume .3 minutes per message to view on Plaintiff’s cellular telephone.

21. That the text messages made by the Defendant at times rendered Plaintiff's telephone unusable due to the excessive number of messages.
22. That the text messages from the Defendant are annoying and upsetting to the Plaintiff.
23. That messages included offers or promotions
24. That some messages stated: Hi Alyssa! Today is the LAST DAY to shop or skip your Adore Me Showroom. Don't forget, act now! Shop the new collections in your [month] Showroom. <http://r.adore.me/65b741b96a0457d8ee>. Reply STOP to stop SMS.
25. Other messages stated: Adore Me: New season, NEW STYLES! Your [month] showroom is HERE! Check it out now and don't forget to shop or skip: <https://r.adore.me/763ac03d040f68c1e1b> Txt STOP to Optout.
26. That upon information and belief, Defendant initiated all of the text messages described herein using an automatic dialing system as defined by the TCPA.

V. COUNT ONE

(Telephone Consumer Protection Act of 1991
and 47 C.F.R. 64.1200, et seq.)

27. Plaintiff repeats, realleges and incorporates by reference the preceding and succeeding paragraphs in this complaint as if each of them was reprinted herein below.
28. The Defendant at all times material and relevant hereto, unfairly, unlawfully, intentionally, deceptively and/or fraudulently violated the TCPA, 47 U.S.C. §227, et seq. and 47 C.F.R. 64.1200, et seq. and TCPA, 47 U.S.C. §227(b)(1)(A)(iii) by initiating telephone calls to Plaintiff's telephone using an automatic telephone dialing system and/or used an artificial and/or prerecorded voice to deliver messages without having consent of Plaintiff to make such calls and leave such messages.
29. The acts and/or omissions of the Defendant at all times material and relevant hereto, as described in this complaint, were done unfairly, unlawfully, intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal defense, legal justification or legal excuse.
30. As a causally-direct and legally proximate result of the above violations of the TCPA, the Defendant at all times material and relevant hereto, as described in this complaint, caused the Plaintiff to sustain damages as a result of their innumerable

telephone calls that harassed, annoyed and abused Plaintiff, and disturbed his peace and tranquility at home and elsewhere.

31. As a causally-direct and legally proximate result of the above violations of the TCPA, the Defendant at all times material and relevant hereto, as described in this complaint, caused the Plaintiff to sustain damages and experience emotional distress.
32. As a causally-direct and legally proximate result of the above violations of the TCPA, the Defendant at all times material and relevant hereto, as described in this complaint, is liable to actual damages, statutory damages, treble damages, and costs.
33. Plaintiff received multiple calls from Defendant using an automatic telephone dialing system and/or an artificial and/or prerecorded voice entitling Plaintiff to Five Hundred Dollars and No Cents (\$500.00) for each artificial and/or prerecorded telephone call pursuant to the TCPA, 47 U.S.C. §227(b)(3)(B),
34. The Defendant caused said telephone calls of an artificial and/or prerecorded nature to be placed willfully and/or knowingly entitling Plaintiff to a maximum of treble damages pursuant to the TCPA, 47 U.S.C. §227(b)(3).

WHEREFORE, Plaintiff respectfully requests that judgment be entered against the Defendants for:

- (a) Actual damages;
- (b) Statutory damages pursuant to 47 U.S.C. §227(b)(3)(B).
- (c) Treble damages pursuant to 47 U.S.C. §227(b)(3);
- (d) For such other and further relief as may be just and proper.

Dated: March 8, 2021

/s/ Seth J. Andrews

Seth J. Andrews, Esq.

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